

FRANCIS AND SHIRLEY ANGLADO

IBLA 74-334

Decided December 24, 1974

Appeal from decision of the Montana State Office, Bureau of Land Management, denying appellants' petition for reinstatement of oil and gas lease M 24957-G, terminated for failure to timely pay the annual rental.

Reversed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Where appellants mailed rental payment for oil and gas lease in sufficient time for it to arrive in the proper BLM office on or before the due date but it does not and the lease terminates, the lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) as the failure to pay the rental timely is "not due to a lack of reasonable diligence on the part of the lessee."

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --
Oil and Gas Leases: Termination

Where appellant supplies credible evidence as to date of mailing, it will be duly considered in the evaluation of whether due diligence was demonstrated in appellant's effort to make a timely rental payment.

APPEARANCES: Robert D. Hill, Esq., of Lawton, Christensen, Fazio, McDonnell, Briggs, Ward and DeSales of La Habra, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Francis and Shirley Anglado have appealed from a decision of the Montana State Office, Bureau of Land Management, dated May 16, 1974, which denied their petition for reinstatement of oil and gas lease M 24957-G. The lease was terminated for failure to timely pay the annual rental.

The Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b)(1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 31 of the Mineral Leasing Act was further amended by the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), to allow reinstatement of a terminated lease upon a lessee's timely petition. The lessee, however, must show that the failure to pay on time "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Id. The State Office, in denying the lessee's petition to reinstate the lease, found that the appellants have not satisfied either of the requirements for reinstatement.

Appellants' rental payment was due on May 1, 1974. The envelope containing the rental check was mailed from La Habra, California, postmarked April 30, 1974, and transmitted via airmail. The rental was not received by the Bureau's office in Billings, Montana, until May 2, 1974, one day late. Therefore it terminated by operation of law.

Appellants assert their lease should be reinstated as their failure to transmit the rental was not the result of lack of reasonable diligence. They maintain that they posted the rental payment on April 29, but because of an inexplicable delay the letter was not postmarked until April 30. In support of their contention they submit a letter from the Assistant Superintendent of Mails, Fullerton, California, which verifies that their rental payment was in the hands of the postal service in sufficient time for proper cancellation on April 29.

Mailing payment one day before the due date at a distant office does not demonstrate reasonable diligence. Gordon R. Epperson, 16 IBLA 60 (1974).

[1] However, this Board has on repeated occasions allowed reinstatement where a payment was postmarked two days prior to the due date but was received one day late. Karl Heinz Schober, 16 IBLA 382 (1974). Sharon Rae Cook, 15 IBLA 424 (1974). Although the rental payment was actually postmarked April 30, appellants have

presented satisfactory evidence that, in fact, their payment should have been postmarked April 29, the second day prior to the due date. Where an appellant has offered acceptable evidence that he mailed the rental earlier than the date of the postmark, the Board will consider the matter on the basis of the earlier date. Mary White, 13 IBLA 363 (1973); see also Minntex Oil Company, 17 IBLA 16 (1974); but see Martha N. Jackson, 18 IBLA 92 (1974); W. A. Fitzburgh, 18 IBLA 94 (1974). Appellants are entitled to like consideration in view of the postal authority verification of their earlier mailing two days before the due date.

Having considered the distance involved and the normal delays attendant upon collection, transmittal, and delivery of mail, we are of the opinion that appellants mailed their payment in sufficient time for it to have arrived in the State Office on the due date, but that for unexplained reasons the payment was delivered late. Therefore, we conclude that appellants' case comes within the ambit of provisions in 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) for reinstatement where failure to pay timely is "not due to a lack of reasonable diligence on the part of the lessee." R. G. Price, 8 IBLA 290 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the State Office decision is reversed and the case is remanded to the Bureau of Land Management for appropriate action consistent with this decision.

Martin Ritvo
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

